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ADMITTED IN N.Y. AND N.J.

September 12, 2017

**VIA ECF**

Honorable Kiyo A. Matsumoto  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: **United States v. Martin Shkreli, 15 Cr. 637 (KAM)**

Dear Judge Matsumoto:

Mr. Shkreli respectfully submits this letter in response to the Government's September 7, 2017 letter (Dkt. No. 362) seeking to revoke Mr. Shkreli's bail as a "danger to the community" because of several of his recent public statements. While we do not condone Mr. Shkreli's comments, his constitutionally-protected political hyperbole does not rise to the level of making him a "danger to the community" when he is not and has never before been considered to be a danger.

The Government accuses Mr. Shkreli of engaging "in an escalating pattern of threats and harassment that warrant his detention pending sentencing." Gov't Motion at 1. In making this assertion, the Government relies on Mr. Shkreli's social media posts relating to Hillary Clinton and Lauren Duca.<sup>1</sup> However ill-advised Mr. Shkreli's comments regarding former Secretary Clinton and Ms. Duca may have been, they do not constitute an escalating pattern of threats. As the Supreme Court has noted: "The language of the political arena . . . is often vituperative, abusive, and inexact." *Watts v. United States*, 394 U.S. 705, 708 (1969) (reversing the defendant's conviction after finding that the defendant was using "political hyperbole" when he stated "I have already received my draft classification as 1-A and I have got to report for my physical this Monday coming. I am not going. If they ever make me carry a rifle the first man I want to get in my sights is L.B.J.").

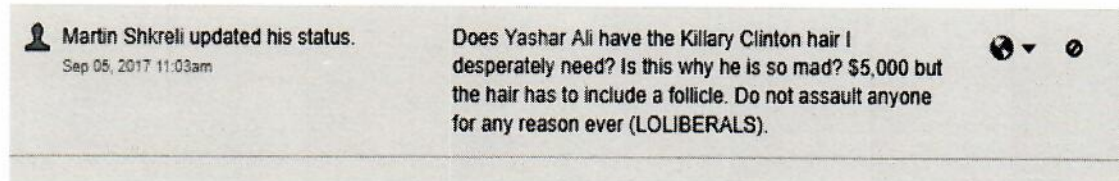
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<sup>1</sup>Mr. Shkreli's disagreements with journalist Lauren Duca are also based on political views, as Ms. Duca is a vocal critic of President Trump. Notably, all of the comments relating to Ms. Duca pre-date the jury verdict in this case.

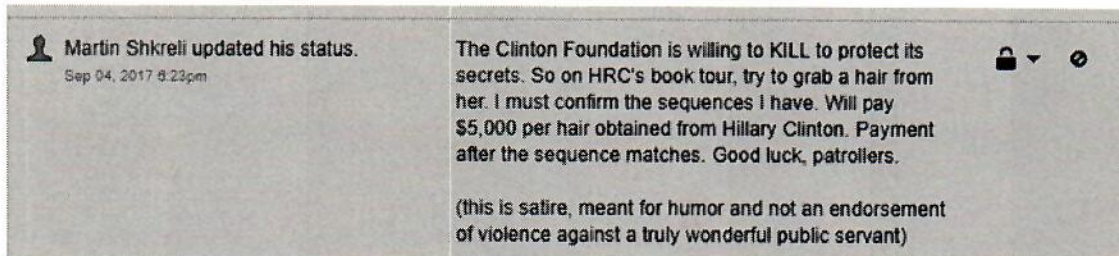


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Indeed, in the current political climate, dissent has unfortunately often taken the form of political satire, hyperbole, parody, or sarcasm. There is a difference, however, between comments that are intended to threaten or harass and comments—albeit offensive ones—that are intended as political satire or strained humor.<sup>2</sup> While Mr. Shkreli's comments were tasteless to many, they were not made in a threatening manner. In fact, when alerted by a commentator that his post could be interpreted to encourage violence, Mr. Shkreli clarified his post the next morning by noting “Do not assault anyone for any reason ever.”<sup>3</sup>



Mr. Shkreli modified his original post again hours later<sup>4</sup> when he stated “this is satire, meant for humor and not an endorsement of violence against a truly wonderful public servant.”



<sup>2</sup>One recent example of this form of offensive political speech was comedian Kathy Griffin's controversial photograph of her holding the faux bloody head of President Trump. Ms. Griffin's penalty was not prosecution but rather losing her position as CNN's co-host of their annual New Year's televised celebration in Times Square. In contrast, the Government here is seeking remand.

Another example of political hyperbole is when President Donald Trump, as a candidate, caused a controversy last year by implying that “Second Amendment people” could prevent former Secretary Clinton from abolishing their right to bear arms (“Hillary wants to abolish -- essentially abolish the Second Amendment. By the way, if she gets to pick, if she gets to pick her judges, nothing you can do, folks. **Although the Second Amendment people, maybe there is, I don't know.**”). An additional example is political commentator Ann Coulter, who stated the following about former Senator John Edwards in 2007: “[I]f I'm gonna say anything about John Edwards in the future, I'll just wish he had been killed in a terrorist assassination plot.”

<sup>3</sup>Mr. Shkreli made this clarification before the Government informed counsel that the Secret Service was investigating this matter.

<sup>4</sup>Although this post was modified on September 5<sup>th</sup>, it retained the date and time of the original post a day earlier.

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Moreover, the satirical nature of his post is evident from the post itself where Mr. Shkreli states that he will only make payment once he can match the hair's DNA sequence to a copy of Mrs. Clinton's DNA that he has, referencing an August 30, 2017 post where he jokingly claimed to have Mrs. Clinton's DNA and a September 1, 2017 post where he joked about "cloning" her.

We understand and respect the Government's concern in this matter and wish to assure this Court that we have fully explained the Government's position on these issues to our client, who has in turn assured counsel that he regrets his comments and understands why his conduct may have been alarming to others. He reiterated to us that it was never his intention to cause harm or encourage others to cause harm to former Secretary Clinton. Additionally, in a personal letter to this Court, Mr. Shkreli apologizes for using poor judgment and stresses that he "never intended to cause alarm or promote any act of violence whatsoever." Exhibit A.

Because Mr. Shkreli never intended any harm or violence, there is no basis to find that he is a "danger to the community." Accordingly, we respectfully ask Your Honor not to modify Mr. Shkreli's bail status or conditions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Benjamin Brafman', written over a horizontal line.

Benjamin Brafman

cc: All Counsel (via ECF)